IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.945 OF 2001
IN
SESSIONS CASE NO.94 OF 2000

Pradeep Ramchandra Pawar ..Appellant
(Orig.Accused)

Vs.

The State of Maharashtra ..Respondent

Mrs. V.V.Thorat for the appellant

Mrs. P.H.Kantharia, A.P.P. for the state

CORAM : J.N.PATEL &
SMT.ROSHAN S.DALVI, JJ.

DATED : 19TH JULY, 2006

P.C.:

1. The appellant accused has challenged his conviction and sentence in Sessions Case no.94 of 2000 by the Sessions Judge, Satara who found him guilty for having committed murder of his wife by pouring kerosene on her person and setting her ablaze and by his judgment and order dt.3.10.01, convicted and sentenced him to suffer imprisonment for life and to pay fine of Rs.2000/- in default to undergo rigorous imprisonment for three months.

The learned Trial Court also directed that he shall be entitled to set-off under section 428 of the Code of Criminal Procedure.

2. Briefly stated the prosecution's case is that the appellant accused was residing with the deceased Sunita as husband and wife as a tenant in the house of one Laxmi Bapu Keskar, P.W.No.8 situated at Mungse Ali Raviwar Peth, Wai, Taluka Wai, District Satara. They had a son by name Rohit, P.W.No.2. Both the appellant accused as well as the deceased Sunita were actually having their spouses but it appears that they have deserted them and started residing together. The appellant accused used to frequently quarrel with the deceased Sunita as he suspected her of having illicit relations with other persons and for the said reason used to beat her and was in the habit of consuming liquor. A day prior to the incident, the appellant accused came home and picked up quarrel with Sunita and attempted to set her ablaze but as soon as he put kerosene on her person, she escaped and went to her brother's house who was residing in the neighbourhood i.e. Ganesh Sitaram

Pawar, P.W.No.1. Ganesh S.Pawar pacified the appellant accused and persuaded the deceased, Sunita to go back. But on the very next day, i.e. 29.4.2000, at about 2.00 to 2.30 p.m., the appellant accused again came drunk and picked up quarrel with deceased and poured kerosene on her person and set her ablaze by lighting with a matchstick. On catching fire, Sunita tried to escape and as soon as she stepped out of the house and shouted for help, her landlady Laxmi Bapu Keskar, P.W.No.8 noticed her coming out of her house in burnt condition and therefore she poured a bucketful of water on the victim which extinguished the fire. Thereafter, Sunita went to her brother's place in burnt condition and narrated the incident to him on which her brother P.W.No.1 took her to Government Hospital at Wai. This fact was also noticed by wife of Ganesh, Smt. Shobha Mahadeo Pawar, P.W.No.3. On reaching Rural Hospital, the victim was examined by Dr.Anandrao Balwant Bhosale, P.W.No.7 who found that she was having following injuries:

Superficial to deep burns on head, face,

neck, right upper limb and total percentage of the burns was 60%. Burns were also present on abdomen, chest.

3. On examining Sunita, Dr.Anandrao B.Bhosale, P.W.No.7 issued medico-legal certificate which is at Ex.45. In the meantime, Police Head Constable, Krishna Ganpat Mane, P.W.No.10 on receiving information from Medical Officer of Rural Hospital, Wai, visited hospital and recorded the statement of Sunita and obtained her thumb impression on the basis of which the offence under section 307 of the Indian Penal Code came to be registered against the appellant accused. Further investigation in the matter was taken up by A.P.I. Deepak Shankarrao Sawant, P.W.No.13 who was attached to Wai Police Station. He visited the scene of occurrence and prepared spot panchnama Ex.38 in the presence of panchas. The appellant accused came to be arrested and panchnama to that effect Ex.52 was prepared. Sunita was referred to Civil Hospital, Satara for further treatment where Mr.Rajaram Nagesh Jagdale, P.W.No.11 who was working as a Special Executive Magistrate at Satara recorded her statement on

29.4.00 after being satisfied that the victim was conscious to make a statement. It appears that the victim could not survive and on 7.5.00 succumbed to the burn injuries at Civil Hospital and therefore, police prepared inquest panchnama in the presence of panchas and the dead body was sent for conducting post mortem examination. P.W.No.12, Dr. Avinash Dattatraya Ashtekar conducted post mortem of the dead body and found that the victim had suffered 67% burn injuries and in his opinion probable cause of death was shock due to septicaemia. The police then altered the offence registered against the accused to one under section 302 of the Indian Penal Code. In the course of investigation, police recorded the statement of witnesses who were conversant with the case and the articles seized were referred to Chemical Analyser for his report. On completing the investigation, charge sheet against the accused came to be filed in the court of J.M.F.C. at Wai who committed the case for trial to the court of Sessions at Satara.

4. In reply to the charge, the appellant accused pleaded not guilty and claimed to be tried.

The plea taken by the appellant accused in his defence was that he has been falsely implicated in the case by the relatives of the deceased and that he had no relations with the deceased.

5. On conclusion of trial, the learned Trial Court found that the prosecution has proved that the death of Sunita was homicidal and that it was the appellant accused who has committed her murder by intentionally and knowingly causing death of Sunita and therefore, he is guilty of committing offence u.s.302 of the Indian Penal Code. This is how the appellant accused came to be convicted and sentenced to suffer imprisonment of life with fine.

6. Ms. Thorat, the learned counsel for the appellant accused submitted that if the court examines the overall evidence led by the prosecution, it is more indicative of the fact that the victim attempted to commit suicide by pouring kerosene and setting herself on fire as a result of which she died. It is therefore, submitted that there is all possibility that the victim implicated the appellant accused on being so tutored by her

relatives i.e. her mother and brother, Ganesh Pawar, P.W.No.1. It is submitted that the prosecution having failed to examine the mother of the victim who had accompanied her to the hospital is fatal to the prosecution case as she would have been the best person to whom the victim must have narrated the true incident which resulted in causing her burn.

7. It is submitted that the victim was residing in the neighbourhood of her parents, which is just opposite her house and, therefore, it is unnatural that she would rush to her brother who resides in the neighbourhood but away from the parents. Another contention made by the learned counsel for the appellant is that the dying declaration is not recorded in Question and Answer form and the learned Trial Judge has overlooked the overwriting in the statement of the victim which has been treated as an F.I.R. and dying declaration recorded by Police Head Constable, P.W.No.10, Krishna Ganpat Mane. It is submitted that the very fact that F.I.R. was lodged only after the victim’s statement was recorded by P.H.C.

Mane in the hospital goes to show that Sunita falsely implicated the appellant accused at the instance of her parents and brother.

8. It is submitted that the evidence of the child witness, Rohit Pradeep Pawar, P.W.No.2 is unreliable as he was residing with his paternal grand parents and therefore, he has falsely implicated his father by saying that his father had burnt his mother. He has also not been able to identify his father in the court and therefore, the possibility of the appellant accused being falsely implicated cannot be ruled out and he deserves to be given benefit of doubt.

9. On the other hand, the learned A.P.P. submitted that the fact that Sunita died due to burn injuries is not disputed by the appellant accused and the only question which is required to be considered is whether it is the appellant accused who is the author of the burn injuries caused to the victim which has resulted in her death and therefore, the prosecution has proved its case beyond reasonable doubt. It is submitted that

the presence of the appellant accused alongwith victim at the time of incident stands duly established by the evidence of not only their son Rohit, P.W.No.2 but also the land lady i.e. P.W.No.8 who was the first to reach the scene of occurrence and extinguish the fire and saw that the accused was present in the room. The conduct of the appellant accused in not making any attempt to save Sunita also goes to show that he not only had the knowledge but also intention to burn her to death. It is submitted that though the dying declaration is not recorded in question and answer form, it by itself does not suffer from any illegality as her dying declaration recorded by Special Executive Magistrate clearly goes to show the complicity of the appellant accused as the author of the burn injuries caused to Sunita.

10. The learned A.P.P. further submitted that the appellant accused is trying to wriggle out of the case by taking a stand that he has no relation with Sunita and that Rohit is not born out of their illicit relations. It is submitted that the scene of occurrence, panchnama and the medical and

forensic evidence sufficiently corroborates the prosecution's case and therefore the appeal deserves to be dismissed.

11. As regards the issue whether Sunita's death was homicidal though not much disputed, but prosecution has duly proved that probable cause of death was shock due to septicaemia due to 67% burns and for that purpose, prosecution has examined P.W.No.12, Dr.Avinash Dattatraya Ashtekar, Medical Officer who effected autopsy on the dead body of Sunita Pawar on 7.5.00 in between 8 to 9 p.m. and found following injuries on her person which has been recorded in Column No.17 of the post mortem examination report which is Ex.60.

Superficial to deep burns over:

1.Head and Neck 9%

2.Right upper extremity 9%

3.Left upper extremity 9%

4.Chest and Abdomen 16%

5.Back 18%

6.Right lower extremity 6%

Total burns 67%

12. Dr.Avinash found burns wounds were infected and foul smelling and these injuries were ante mortem injuries and in his opinion, the probable cause of death was shock due to septicaemia due to 67% burns. In the cross-examination, an attempt was made to show that Sunita was not in a condition as the nature of injuries suffered by Sunita were such that she would have immediately become unconscious which has been specifically denied. So also if the palm is burnt, the thumb impression cannot be taken. The cross-examination went to the extent of suggesting that he has effected false autopsy which has been specifically denied by the medical officer.

13. The next most crucial issue which requires to be considered is whether it is the appellant accused who is the author of burn injuries suffered by Sunita and for that purpose, evidence of P.W.No.8, Laxmi Bapu Keskar assumes importance. In her evidence, she has deposed to the effect that the appellant accused alongwith Sunita had taken

her room on rent and both of them were leaving in the room and had one son whom she has identified in the court i.e.Rohit. She has also deposed to the effect that the appellant accused used to come and live in the room after a gap of 3/4 days and they used to quarrel regularly. On the earlier day of incident, they had a quarrel and on the day of incident, appellant accused had come at about 2 p.m. and burnt his wife Sunita, who had come out of the house and that time, she saw her. She then filled-up one bucket below the water-tap and poured the water on her person. At that time, her husband i.e. appellant accused was simply standing and after she extinguished the fire, he brought the water in a pitcher and poured it on her person. She has also deposed to the effect that Rohit was near her at that time. This witness had identified the accused in the court as the same person who was her tenant and his name is Pradeep Pawar. The evidence of this witness clearly goes to show that the appellant accused was present in the house when Sunita got burnt which has been specifically denied by the accused as false. The only improvement in her case which has been brought as omission is

about the presence of their son Rohit, which in our view is not very material as Rohit was very much present at the time of incident which can be seen from his evidence before the court though he has not whole heartedly supported the prosecution as he could not identify the appellant accused in the court.

14. The next comes the evidence of P.W.No.1, Ganesh Sitaram Pawar, who is the brother of the victim who deposed to the effect that the victim went to his house immediately after the incident and disclosed that she has been burnt by her husband. We do not find any reason to disbelieve the evidence of P.W.No.1 though he is brother of the victim, Sunita. His evidence is corroborated by the evidence of P.W.No.3, Shobha Mahadeo Pawar, his own wife. The evidence of P.W.No.3 clearly goes to show that the appellant accused was residing with the victim Sunita and had a child by name Rohit and that there used to be frequent quarrels amongst them as the appellant accused used to suspect her character and that on the day of the incident the victim, on being burnt, immediately

rushed to their house and disclosed that she had suffered burn injuries caused by her husband by setting her on fire. This fact is independently confirmed by Dr. Anandrao B.Bhosale, P.W.No.7, the Medical Officer attached to Rural Hospital, Wai. In his evidence, he has deposed to the effect that on 29.4.00 he was attached to Rural Hospital on that day Sunita Pradeep Pawar i.e. the deceased was brought to her by Prakash Narayan Pawar and P.W.No.1, Ganesh Pawar with the history of burns which was given by the patient. According to him, Sunita told him that kerosene was sprinkled on her by her husband which took place on 29.4.00 at about 2.30 p.m. At that time, he found her to be conscious and found injuries which he has noted in the medico-legal certificate Ex.45. Dr.Bhosale has also deposed to the effect that there was smell of kerosene and that the patient was conscious, co-operative and well-oriented to time and place and was in a position to give statement. Therefore, he informed Police Station Officer, Wai on telephone. The Police Head Constable arrived and in his presence Head Constable had taken the statement that she was fully conscious and able to

give the statement. Head Constable recorded the statement and took his signature after its completion. He then put the endorsement accordingly and identified the same as Ex.46. It is this endorsement which is being contested by the learned counsel for the appellant as over writing which can be seen on examination. This statement which came to be recorded by P.H.C. Mane, P.W.No.10 and treated as F.I.R. was endorsed by the doctor, P..W.No.7, Dr.Anandrao Bhosale across the statement and therefore it cannot be said to be over writing as this does not in any manner make it unreliable. Dr.Bhosale has also examined the appellant accused and found that he had following injuries on his person.

1. C.L.W. over interlion region verticle in direction 5 x 1/04 cm.

2. Linear abrasion left index finger 1/2 x 1/4 cm.

3. Linear abrasion over left wrist 1 x 1/4 cm.

4. Linear abrasion over left wrist central aspect 1/2 x 1/4 cm.

5. Linear abrasion over right wrist 1 x 1/4 cm.

15. In the opinion of P.W.No.7, Dr.Bhosale, all the above injuries were caused within six hours which rather goes to show that the appellant accused was present at the time of the incident and he is the person to quarrel with Sunita, pour Kerosene on her and set her ablaze. In all probability he suffered injuries in the scuffle considering the nature of injuries suffered by him. Though these injuries had not been mentioned in the Opinion Certificate but the Doctor had specifically stated that these had been mentioned in the medical papers. Doctor had also stated that the appellant accused was not under the influence of liquor and that part of his hair were burnt for which he issued separate certificate. Doctor had also denied that the palms of Sunita were also burnt and

the thumb-impression obtained below the statement Ex.46 is not her thumb impression. He has deposed that statement was recorded in his presence and thumb impression of the victim was obtained and he had not prepared any false statement.

16. As regards the spot and seizure panchnama, the prosecution has examined P.W.No.4, Raphik Shahabuddhin Sayyad and P.W.No.5, Anil Trimbak Patwardhan. P.W.No.5 has not supported the prosecution case but admits that the seizure panchnama Ex.40 bears his signature. The pancha P.W.No.4 has deposed to the effect as to what was the condition on the spot when panchnama was prepared. He stated that there was a black colour rock-oil (kerosene) plastic can and one tin of rock-oil (kerosene) on the ground. He also saw that some burnt pieces of saree, one shirt in burnt condition were also there. Some rock-oil was spread on the ground and also found some rock-oil appeared to have been sprinkled on the wall. One Mangalsutra was broken, the beads and the golden pendolum was also lying. In his presence, the Police seized all these articles which were

identified as Muddemal article Nos. 1 to 11. He had also described the house where the victim and the appellant accused were residing as a tenant. In the cross-examination an attempt was made to show that the house was situated in such a position that if anybody shouted from the room where the victim was residing, it could not be heard but this does not help the appellant accused for the very reason that P.W.No.8, Laxmi Bapu Keskar, the land lady has deposed to the effect that she has heard their quarrel and came out of the house and saw Sunita had come out of the room in burnt condition.

17. In order to prove the F.I.R. which has now been treated as dying declaration, prosecution has examined Police Head Constable, P.W.No.10, Krishna Ganpat Mane, who was at the relevant time working as a Reserve P.S.O. He has proved that F.I.R. was the dying declaration and has deposed to the effect that it was recorded as per the say of the deceased in the presence of P.W.No.7.

18. Apart from the dying declaration recorded by P.W.No.7, Mane, dying declaration of the

deceased Sunita also came to be recorded by Special Executive Magistrate, P.W.No.11, Rajaram Nagesh Jagdale on 29.4.00. In his evidence he has also deposed to the effect that he was called at the police station to record the dying declaration and he recorded the statement of the victim as per her narration and obtained her thumb impression after satisfying himself that the victim was fit to make a statement by getting her examined by the doctor who told him that she was conscious to give the dying declaration. He has proved the dying declaration which is at Ex.56 and also the endorsement of the doctor that the patient was conscious. He has specifically deposed in his evidence that he recorded the dying declaration of the patient in the presence of the doctor and no one else was present at that time. As regards overwriting in the timing it was such that he has corrected it and has put his signature as the timing came to be wrongly recorded and that the dying declaration was recorded between 7.20 to 7.45 p.m. The doctors endorsement is Ex.55.

19. Therefore, if one takes into consideration,

the evidence of P.W.No.1, Ganesh Pawar who deposed that at the very first opportunity Sunita has disclosed to him that it is her husband who has poured kerosene on her person and set her ablaze. This fact has also been confirmed by Dr.Bhosale, P.W.No.7 who was first to examine when she was brought to Rural Hospital. The fact that it is the appellant accused who has poured kerosene on her person and set her ablaze had also been stated by her when Police Head Constable, P.W.No.10, Mane recorded her statement which has been treated as F.I.R. and the same thing has been re-stated by her when P.W.No.11, Special Executive Magistrate recorded her statement.

20. In our view there is no reason to disbelieve the evidence of all these witnesses and we do not find that Sunita has falsely implicated the appellant accused which is the defence and as the appellant accused has gone to the extent of stating that he does not know Sunita at all and was not at all concerned with her falsifies the stand taken by appellant in his defence that may be Sunita committed suicide due to ill-treatment

received at the hands of the appellant accused.

21. We find this establishes strong motive on the part of the appellant accused for committing murder of Sunita as he suspected her character and quarrelled with her on this ground. Not only this, the appellant accused had all the opportunity to set her ablaze in order to commit her murder and on the earlier day did make an attempt but was unsuccessful as she escaped to her brother's place and inspite of the fact that P.W.No.1, brother of Sunita pacified the appellant accused and mediated between them, the appellant accused on the very next day was successful in pouring kerosene on her person and setting her ablaze.

22. The Chemical Analyser's report also corroborates the prosecution's case as the clothes of the victim as well as the appellant accused and the articles collected from the spot came to be examined and the results of the test for the detection of kerosene residue on Ex.1, 2, 7 and 8 are found to be positive as per E.65 which are the clothes of the accused :

Ex.No.1 : Partly burnt shirt wrapped in paper labelled A-1

Ex.No.2 : Partly burnt piece of sari wrapped in paper labelled A-2

Ex.No.7 : Banian wrapped in paper labelled B-1

Ex.No.8: Pant wrapped in paper labelled B-2

23. The appellant accused has filed written statement in which he admits that he had suffered injuries on his person but attributes the same to the police having tortured him in custody and that the medical officer gave a false certificate that his hair got burnt at the instance of the P.S.O. and claimed that he has no concern with Sunita. Therefore, taking into consideration the evidence on record in totality there is no hesitation on our part to arrive at the conclusion that it is the appellant accused who has committed the offence and therefore, the learned Trial Court was justified in arriving at a conclusion that death of deceased

Sunita was homicidal and it was due to the act of the accused who poured kerosene on her person setting her ablaze and rightly held him guilty of having committed offence under section 302 of the Indian Penal Code. Therefore, there is no merits in the appeal and the same is dismissed.

J.N.PATEL, J

SMT.ROSHAN S.DALVI, J